clearly become the standard rent. It was never the intention of the legislature to allow of two standard rents for the same premises and such an interpretation, as I see it, would make a mockery of the law which is aimed at helping tenants and not creating anomalies or absurdities. Although the Board would appear to have no powers of apportionment, I can see no difficulty confronting its members (provided always that the previous Rent Board was a responsible body) in ascertaining what is a fair and reasonable rent for the applicant to pay and in reaching this figure the Board will no doubt keep in mind the standard rent of the whole premises.

I find therefore, that the standard rent of the whole of the premises situated at No. 27, Eng Hoon Street is $150 per month and that the rent paid by the applicant is merely current rent. Under section 9(1)(b) of the Ordinance, the Board has powers to fix such rent in accordance with what seems to be equitable and I direct that these proceedings should be remitted to the Board and that action should be taken accordingly. The applicant will be awarded costs of this application.

Order accordingly.

Re S. E. MENAHEM.

[Orig. Civ. Juris. (Sir Charles Murray-Aynsley, C.J.) March 21, 1952]

[Singapore — Bankruptcy No. 159 of 1951]

Bankruptcy Ordinance (Cap. 45) s. 3(1)(i) — Judgment for costs — Bankruptcy petition.

In this case the debtor brought an action in contract against the petitioning creditor. This action was unsuccessful and judgment was given in favour of the petitioning creditor with costs. These costs were taxed and were not paid. The petitioning creditor sought to make the debtor bankrupt.

Held, that a judgment for costs only would support a bankruptcy petition.*

Cases referred to:—

(1) *Re Leo Hoon Hong* (1951) M.L.J. 222 dissented from.

(2) *Ex parte Moore* (1885), 14 Q.B.D. 627.

(3) *In re Alexander* (1892) 1 Q.B. 216.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — In this case the debtor brought an action in contract against the petitioning creditor. This action was unsuccessful and judgment was given in favour of the petitioning creditor with costs. These costs were taxed and were not paid. The petitioning creditor now seeks to make the debtor bankrupt.

At the hearing counsel for the petitioning creditor called my attention to a recent case in the Federation from Malacca reported in (1951) M.L.J. 222[1], in which it was held that a judgment for costs was not a final judgment within section 3(1)(i) of the Bankruptcy Ordinance.

Our Ordinance in this matter follows the English Act of 1883. The difference between that Act and the present Act being the omission of the words "or order" after the word "judgment". The learned Judge did not quote any authority but after consulting English cases under the 1883 Act I find ample authority for the proposition that a judgment for costs only would support a bankruptcy petition. (See *Ex Moore*[2], *In re Alexander*[3]). The cases to the contrary were those in which the liability to pay costs did not arise from a judgment.

Order accordingly.

* See the judgment of Murray-Aynsley, J. (as he then was) in *Re Looi Guan Kway* (1941) M.L.J. 228 where the learned Judge in somewhat similar circumstances held that the matter was covered by s. 237 of the Civil Procedure Code (Cap. 7) and 1932 Rule No. 4, sub-rr. 59 and 70. — *Ed. M.L.J.*

PUBLIC PROSECUTOR v. GAN LOH.

[App. Crim. Juris. (Wilson, J.) May 19, 1952]

[Selangor — Criminal Appeal No. 17 of 1952]

Emergency (Rubber Control) Regulations, 1949, Regulation 5(2) — Prosecution for an offence under the Regulation — Proof of possession.

In a prosecution for an offence under the Emergency (Rubber Control) Regulations it is not necessary to prove that the accused person had actual possession of the rubber. It is sufficient to prove that he had potential physical control of the rubber.

Cases referred to:—

(1) *Chong Kon Lip v. Public Prosecutor* (1946) M.L.J. 165.

(2) *Tan Shu En & Anor. v. Public Prosecutor* (1948) M.L.J. 196.

CRIMINAL APPEAL.

D. M. K. Grant (D.P.P.) for the appellant.

M. Edgar for the respondent.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Wilson, J. : — The respondent was charged with being in unlawful possession of rubber. At the close of the case for the prosecution, the learned

Magistrate acquitted the accused without calling upon him for his defence and he now gives as his reason for so doing that the prosecution failed to prove that the accused was in actual possession of the rubber. In so deciding he was no doubt influenced by the decision in the case of *Chong Kon Lip v. Public Prosecutor*[1], which was quoted to him by Counsel then appearing for the accused. That was a case in which it was held that before a person can be called upon to account for how he came into possession of something reasonably suspected of being stolen, that person must be actually found in possession or found actually conveying the property suspected of being stolen. The section, however, being discussed in that case was section 35(i) of the Minor Offences Enactment. The wording of that section is different from the wording of Regulation 5(2) of the Emergency (Rubber Control) Regulations, 1949 which provides simply that a person who is unlawfully in possession of rubber shall be guilty of an offence. In *Tan Shu En & Anor. v. Public Prosecutor*[2], it was held by a Court of three Judges that to prove possession under sections 3 and 18 of the Opium and Chandu Proclamation it is necessary to prove that the accused had actual or potential physical control of the opium or chandu. Section 3(1) of the Proclamation is as follows:—

"Subject to the provisions of section 20 of this Proclamation, any person who has in his possession any opium or chandu shall be liable to imprisonment for a term not exceeding five years."

In my opinion, in a prosecution for an offence under the Rubber Control Regulations it is not necessary to prove that the accused person had actual possession of the rubber. I think it is sufficient to prove that he had potential physical control of the rubber.

So far as the sheets of rubber marked "24" are concerned, there was no evidence to show that their possession by the accused was unlawful. So far as the 125 sheets marked "Chermang" were concerned, I think there was evidence which would have justified the conviction of the accused in the absence of any explanation by him as to how these sheets came into his possession. There was evidence that the sheets were taken by Mohamed bin Haji Abdullah to Boustead's godown at Klang on the instructions of the accused. The accused did not go to the godown in the same car as the rubber but there was evidence that the accused went to Boustead's godown and was there when the rubber was being taken out of the car and that he asked Tan Leong Eng to weigh the rubber. In these circumstances the accused should have been called upon for his defence. The appeal of the Public Prosecutor is allowed and the case remitted to the Magistrates' Court at Klang to be tried *de novo* by another Magistrate. I think that a new charge should be framed relating only to the 125 sheets marked "Chermang."

Order accordingly.

TAN SIONG KOK v. REX.

[App. Crim. Juris. (Sir Charles Murray-Aynsley, C.J.) May 21, 1952]

[Singapore — Magistrate's Appeal No. 17 of 1952]

Penal Code, s. 338 — Negligence — Degree of negligence — Whether the conviction be under the Penal Code or Road Traffic Ordinance.

The appellant was charged that he on or about the 25th day of September 1951 at 12.05 a.m. at East Coast Road, Singapore, did cause grievous hurt to one Tay Heah Heang by doing a negligent act, so negligently as to endanger human life or the personal safety of others etc., and thereby committed an offence under section 338 of the Penal Code.

The appellant was tried, convicted and sentenced to six months rigorous imprisonment.

There was no dispute that the appellant was driving one of the Vehicles and that as a result of the collision the driver of the jeep station wagon lost his arm. The question at issue in this case was of what degree of negligence, if any, the appellant was guilty and whether the appellant should have been convicted under the Penal Code or under the Road Traffic Ordinance.

Held, that it has been laid down that the relevant sections of the Penal Code are only applicable where a high degree of negligence has been proved, similar to that which would justify a verdict of manslaughter under English Law. Having regard to all the circumstances in this case the appellant should have been convicted of dangerous driving and proper penalty would have been a fine of $200/- or one month rigorous imprisonment together with disqualification for a period of three years.

MAGISTRATE'S APPEAL.

N. L. Macassey for the appellant.

E. P. Shanks (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : —The appellant was convicted under section 338 of the Penal Code. The matter arose out of a motor accident in which the appellant whilst overtaking another car collided with an oncoming car. Unfortunately the driver of this car had his hand outside his car, with the result that the arm got torn off.

The appeal is really concerned with whether the appellant should have been convicted under the Penal Code or under the Road Traffic Ordinance and with the question of penalty. It has been laid down that